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NO. 6125

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United States Circuit Court  
of Appeals

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For the Ninth Circuit

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AMANDO DIDENTI,

*Appellant,*

vs.

UNITED STATES OF AMERICA,

*Appellee*

UPON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE DISTRICT  
OF WASHINGTON, SOUTHERN  
DIVISION

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**BRIEF OF APPELLANT**

T. D. PAGE,

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**FILED**

**AUG 22 1930**

**FRANK W. CLEPEN,**



United States Circuit Court of Appeals  
For the Ninth Circuit

AMANDO DIDENTI,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA

*Appellee*

NO. 6125

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STATEMENT OF CASE

The appellant and two others John Huggler and Jack Esara were charged by indictment with conspiring together and "with sundry and divers other persons to the grand jurors unknown", to violate the National Prohibition Act. The overt acts alleged were *all* ascribed to the three *named* and *known* defendants. (Tr. pp. 2-4). After a trial the jury acquitted Huggler and Esaro but convicted the appellant as a *lone conspirator* and he was sentenced to a term of eight months in the Pierce County Jail. (Tr. pp. 7 & 8). After the verdict was rendered acquitting his co-defendants, the appellant interposed a motion in arrest of judgment on the ground that he could

not alone be guilty of conspiracy. This motion was denied and an exception allowed and entered. (Tr. p. 10). On the trial it was shown by the government that three prohibition agents discovered a still on Huggler's premises, situated on the outskirts of the city of Tacoma, Washington, and Huggler and Esara in charge and that about an hour later, after night-fall, the appellant drove onto the premises with an automobile loaded with sugar, yeast and empty kegs (Tr. pp. 11 & 12). Thereupon the government rested and the appellant moved for a directed verdict of acquittal on the ground that the evidence failed to show any acquaintance between him and his co-defendants, or that he had any connection with the illicit distillery *or even knew that one existed on Huggler's premises*. This motion was denied and an exception allowed and entered. (Tr. pp. 12 & 13). In his own behalf the appellant testified that he was a delivery boy for a Mr. Lidsey, a grocer in Tacoma; that on the day in question, one Joe Pinsitti not connected by the evidence with the conspiracy purchased the sugar, yeast and kegs at the grocery and directed him to deliver them at a certain address which subsequently proved to be the home of Huggler and that he did not know until after his arrest that there was a still there and had no connection therewith. (Tr.

pp. 13 & 14). Huggler and Esara testified that the still belonged to a man named Guarrazi and they were employed by him to operate it, the latter having been working only a few hours when arrested. (Tr. pp. 14 & 15). Thereupon the evidence was concluded and the appellant renewed his motion for a directed verdict of acquittal which was denied and exception allowed (Tr. p 20). After the verdict was rendered by the jury, the appellant moved for a new trial and in arrest of judgment. Both motions were denied and exceptions allowed and entered (Tr. p. 16).

## ASSIGNMENT OF ERRORS

## I.

The lower court erred in refusing to direct a verdict of acquittal in favor of the appellant.

## II.

The lower court erred in refusing to grant the appellant's motion for a new trial.

## III.

The lower court erred in denying appellant's motion in arrest of judgment interposed after the jury had acquitted all of his co-conspirators.

## IV.

The lower court erred in sentencing the appellant to serve a term of eight months in the county jail of Pierce County, Washington.

## ARGUMENT

## I.

The gist of conspiracy is the unlawful agreement and before one can become a party thereto he must have knowledge of its existence. All of these essentials are absent in the present case, so far as the appellant is concerned. He did not know of the existence of the conspiracy, if there ever was one between his co-defendants and unknown persons; he did not know that there was a still on Huggler's premises when he delivered the sugar, yeast and kegs to that address; he was not shown to have been acquainted with Huggler or Huggler's alleged employer prior to his arrest.

"It is a pre-requisite that the accessory or accomplice shall know the guilty purpose, and with such knowledge, shall, in some way have assisted in its being carried out, or in attempt to carry it out." *Vassar v. U. S.*, 38 F. 2nd. 862.

The case of *Pattis v. U. S.* 17 F. 2nd. 562, decided by this Court is not opposed to our contention, for in that case, there was evidence that the appellant actually knew that his co-defendant was operating a still and intended to use the supplies

furnished by him to continue the illicit operation. There was an entire absence of such evidence in the present case, and consequently the motion for a directed verdict of acquittal should have been granted.

## II

The indictment charged the appellant, Huggler and Esara with conspiring to violate the Nation Prohibition Act and all the overt acts set forth in the indictment are alleged to have been committed by them, and by them only. True, the indictment contains the usual "stock" allegation that they conspired with each other, "and with sundry and divers other persons to the grand jurors unknown", but no evidence was introduced in support of this allegation. The proof introduced by the government was limited to the three defendants named in the indictment. The jury acquitted Huggler and Esara and convicted the appellant as a lone conspirator. Under these circumstances, the motion in arrest of judgment should have been granted. One person cannot be guilty of the crime of conspiracy. An unlawful agreement is essential and this contemplates, of necessity, more than one person.



*Bartkus v. U. S.*, 21 F. 2nd. 425.

*U. S. v. Austin*, 31 F. 2nd. 229.

*Feder v. U. S.*, 257 Fed. 694.

*Browne v. U. S.*, 145 Fed. 1.

In the case first cited, *Bartkus v. U. S.*, the rule is thus clearly stated:

“The verdict and judgments against *Kelps, Nevar and Dronsmith* cannot stand; and as one person alone cannot commit the crime of conspiracy, and as there is no evidence to support the averment as to other conspirators unknown, the verdict and judgment as to *Bartkus* must also be set aside.”

We respectfully submit that the judgment of the lower court herein should be reversed.

Respectfully submitted,

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